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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,398	08/28/2003	Elvin R. Lukenbach	JBP-5014	6758

27777 7590 12/21/2005

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EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/650,398

Applicant(s)

LUKENBACH ET AL.

Examiner

Brian P. Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office action is in response to Applicant's remarks filed October 5, 2005. Currently, claims 1-4, 9 and 11-13 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 20041027, 20050226, and 20050614.
3. The rejection of claims 1-4, 9 and 11-13 under 35 U.S.C. 103(a) as being anticipated by Shana'a et al, U.S. Patent No. 6,737,394, is maintained for the reasons of record.
4. The rejection of claims 1-4, 9 and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-4, 9-12 and 17-18 of copending Application No. 10/650,226 is withdrawn in view of applicant's timely filed terminal disclaimer.
5. The rejection of claims 1-7, 9 and 11-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 and 12-14 of copending Application No. 10/650,495 is withdrawn in view of applicant's timely filed terminal disclaimer.

Response to Arguments

6. Applicant's arguments filed October 5, 2005 have been fully considered but they are not persuasive.

Applicant continues to argue that Shana'a et al, U.S. Patent No. 6,737,394, fails to teach or suggest the unexpected results of reduced skin irritancy discovered by applicant with a composition containing an anionic surfactant, hydrophobically-modified polymer, and less than 0.5% by weight of an amphoteric surfactant, as recited in the instant claims. However, upon further review of applicant's Rule 1.132 Declaration dated May 25, 2005, the examiner asserts that applicant has not compared the claimed subject matter with the closest prior art. Specifically, *MPEP 716.02(e)* requires that "An affidavit or declaration under 37 CFR 1.132 must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979)." Therefore, the examiner maintains that Example IV in Table 2 of Shana'a et al, U.S. Patent No. 6,737,394, represents the closest prior art of record, since this composition in Example IV of Shana'a et al requires 9% by weight of a blend of ammonium laureth sulfate/ammonium lauryl sulfate/cocamide MEA/PEG-5 cocamide, 0.8% by weight of cocamidopropyl betaine, 0.5% by weight of glycerin, 1.5% by weight of CARBOPOL AQUA SF-1 (i.e. a hydrophobically modified, crosslinked polyacrylate compound), 0.1% by weight of polyquaternium-10, 1% by weight of organogel particles, and adjuncts to balance. The examiner notes that none of the comparative examples in the 1.132 reflect Example IV of Shana'a et al, U.S. Patent No. 6,737,394, and therefore, maintains

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that the instant claims are rendered obvious in view of Shana'a et al, U.S. Patent No. 6,737,394.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00AM-5:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BPM

Brian P Mruk
December 14, 2005

Brian P. Mruk

Brian P Mruk
Primary Examiner
Art Unit 1751